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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.              | CONFIRMATION NO.            |
|---|-------------|----------------------|----------------------------------|-----------------------------|
| 10/698,046  | 10/30/2003  | Michael E. Landry    | 5259-10801                       | 1199                        |
| 23492   | 7590        | 10/03/2007           |                                  |                             |
| ROBERT DEBERARDINE<br>ABBOTT LABORATORIES<br>100 ABBOTT PARK ROAD<br>DEPT. 377/AP6A<br>ABBOTT PARK, IL 60064-6008 |             |                      | EXAMINER<br>CUMBERLEDGE, JERRY L |                             |
|   |             |                      | ART UNIT<br>3733                 | PAPER NUMBER                |
|   |             |                      | NOTIFICATION DATE<br>10/03/2007  | DELIVERY MODE<br>ELECTRONIC |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

Cassie.Gray@abbott.com  
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|                              |                                      |                                      |  |
|------------------------------|--------------------------------------|--------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/698,046 | <b>Applicant(s)</b><br>LANDRY ET AL. |  |
|                              | <b>Examiner</b><br>Jerry Cumberledge | <b>Art Unit</b><br>3733              |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 July 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 71-100 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 71-100 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 October 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>07/18/2007</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 71, 73-78, 80, 81, 83-88, 90, 91, 93-98 and 100 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ferrante et al. (US Pat. 6,565,573 B1).

Ferrante et al. disclose a system for stabilizing a spine, comprising: a first bone screw (Fig. 5, ref. 30), said first bone screw comprising a threaded shank (Fig. 5, ref. 34)(column 6, lines 2-5) and a head (Fig. 5, ref. 32); a second bone screw (Fig. 5, ref. 30) (column 3, lines 45-51, since there can be multiple screws used in the system), said second bone screw comprising a threaded shank (Fig. 5, ref. 34)(column 6, lines 2-5) and a head (Fig. 5, ref. 32); a first guide (Fig. 8, ref. 94), said first guide being longer than the first bone screw (Fig. 10) and said first guide comprising; a first end (Fig. 8, end near ref. 116) comprising an engagement section (Fig. 8, ref. 124), said engagement section being configured to detachably couple to the head of the first bone screw (Fig. 10), a second end (Fig. 8, end near ref. 114), wherein said second end extends away from the first bone screw when the first guide is detachably coupled to the head of the first bone screw (Fig. 10), and a coupling mechanism (e.g., Fig. 15, ref. 126)(column 3, lines 46-51), said coupling mechanism comprising; an elongated member with a first end (Fig. 15, end near ref. 126) and a second end (Fig. 15, end near ref. 134), a first

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connector (Fig. 15, ref. 132 and ref. 128)(column 11, lines 12-15) on the first end of said elongated member, and a second connector (Fig. 15, ref. 132 and ref. 128)(column 11, lines 12-15)(column 3, lines 45-51, since there can be multiple screws used in the system) on the second end of said elongated member. The first guide is rigid (Fig. 10). The elongated member is a rod (Fig. 15, ref. 126). The stiffness of the first guide varies along the length of the first guide (Fig. 8, since the thickness of the guide varies). The thickness of the first guide varies along the length of the first guide (Fig. 8, ref. 94). The engagement section of the first guide comprises threading (Fig. 8, ref. 124), said threading configured to detachably couple the first guide to the first screw. The system further comprises a third bone screw, said third bone screw comprising a threaded shank and a head, and further comprising a third guide, said third guide comprising an engagement section on one end that is configured to detachably couple to the head of the third bone screw (column 3, lines 45-51, since there can be multiple screws used in the system).

Ferrante et al. disclose a system for stabilizing a spine, comprising: a first bone screw (Fig. 5, ref. 30), said first bone screw comprising a threaded shank (Fig. 5, ref. 34)(column 6, lines 2-5) and a head (Fig. 5, ref. 32); a second bone screw (Fig. 5, ref. 30) (column 3, lines 45-51, since there can be multiple screws used in the system), said second bone screw comprising a threaded shank (Fig. 5, ref. 34)(column 6, lines 2-5) and a head (Fig. 5, ref. 32); a first guide (Fig. 8, ref. 94), said first guide being longer than the first bone screw (Fig. 10) and said first guide comprising: a first end (Fig. 8, end near ref. 116) comprising an engagement section (Fig. 8, ref. 124), said engagement

section being configured to detachably couple to the head of the first bone screw (Fig. 10), a second end (Fig. 8, end near ref. 114), wherein said second end extends away from the first bone screw when the first guide is detachably coupled to the head of the first bone screw (Fig. 10), and a coupling mechanism (e.g., Fig. 15, ref. 126)(column 3, lines 46-51), said coupling mechanism comprising an elongated member with a first end (Fig. 15, end near ref. 126) and a second end (Fig. 15, end near ref. 134). The first guide is rigid (Fig. 8). The elongated member is a rod (Fig. 15, ref. 126). The stiffness of the first guide varies along the length of the first guide (Fig. 8, since the thickness of the guide varies). The thickness of the first guide varies along the length of the first guide (Fig. 8). The engagement section of the first guide comprises threading (Fig. 8, ref. 124), said threading configured to detachably couple the first guide to the first screw (Fig. 10). The system further comprising a third bone screw, said third bone screw comprising a threaded shank and a head, and further comprising a third guide, said third guide comprising an engagement section on one end that is configured to detachably couple to the head of the third bone screw (column 3, lines 45-51, since there can be multiple screws used in the system).

Ferrante et al. disclose a system for stabilizing a spine, comprising: a first bone screw (Fig. 5, ref. 30), said first bone screw comprising a threaded shank (Fig. 5, ref. 34)(column 6, lines 2-5) and a head (Fig. 5, ref. 32); a second bone screw (Fig. 5, ref. 30) (column 3, lines 45-51, since there can be multiple screws used in the system), said second bone screw comprising a threaded shank (Fig. 5, ref. 34)(column 6, lines 2-5) and a head (Fig. 5, ref. 32); a first guide (Fig. 8, ref. 94), said first guide being longer

than the first bone screw (Fig. 10) and said first guide comprising; a first end (Fig. 8, end near ref. 116) comprising an engagement section (Fig. 8, ref. 124), said engagement section being configured to detachably couple to the head of the first bone screw (Fig. 10), a second end (Fig. 8, end near ref. 114), wherein said second end extends away from the first bone screw when the first guide is detachably coupled to the head of the first bone screw (Fig. 10), and an elongated member (e.g., Fig. 15, ref. 126)(column 3, lines 46-51) with a first end (Fig. 15, end near ref. 126) and a second end (Fig. 15, end near ref. 134). The first guide is rigid (Fig. 8). The elongated member is a rod (Fig. 15, ref 126). The stiffness of the first guide varies along the length of the first guide (Fig. 8, since the thickness of the guide varies along the length). The thickness of the first guide varies along the length of the first guide (Fig. 8). The engagement section of the first guide comprises threading (Fig. 8, ref. 124), said threading configured to detachably couple the first guide to the first screw (Fig. 10). The system further comprises a third bone screw, said third bone screw comprising a threaded shank and a head, and further comprising a third guide, said third guide comprising an engagement section on one end that is configured to detachably couple to the head of the third bone screw (column 3, lines 45-51, since there can be multiple screws used in the system).

Ferrante et al. do not disclose a second guide, said second guide being longer than the second bone screw and said second guide comprising; a first end comprising an engagement section, said engagement section being configured to detachably couple to the head of the second bone screw, a second end, wherein said second end

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extends away from the second bone screw when the second guide is detachably coupled to the head of the second bone screw.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have constructed the system of Ferrante et al. with a second guide, said second guide being longer than the second bone screw and said second guide comprising; a first end comprising an engagement section, said engagement section being configured to detachably couple to the head of the second bone screw, a second end, wherein said second end extends away from the second bone screw when the second guide is detachably coupled to the head of the second bone screw, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8. The system as modified with the second guide would be capable of having the first bone screw attached to a first vertebra, the second bone screw attached to a second vertebra, the first guide detachably coupled to the head of the first bone screw, the second guide detachably coupled to the head of the second bone screw, the first guide positioning the first end of the elongated member to the head of the first bone screw, and the second guide positioning the second end of the elongated member to the head of the second bone screw.

Regarding claims 75, 85 and 95, Ferrante et al. disclose the claimed invention except for the elongated member being dumbbell shaped. It would have been an obvious matter of design choice to one skilled in the art at the time the invention was made to have constructed the elongated member of Ferrante et al. being dumbbell

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shaped, since applicant has not disclosed that such solve any stated problem or is anything more than one of numerous shapes or configurations a person ordinary skill in the art would find obvious for the purpose of providing an elongated member for use in a system of spinal stabilization. In re Dailey and Eilers, 149 USPQ 47 (1966).

Claims 72, 82 and 92 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ferrante et al. (US Pat. 6,565,573 B1) in view of Scholl (US Pat. 6,110,175).

Ferrante et al. do not disclose the first guide being flexible.

Scholl discloses a guide that is flexible (column 1, lines 10-12) that is used to ensure the proper positioning and placement of a surgical instrument and/or implant (column 1, lines 10-12).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have constructed the device of Scholl with a flexible guide as taught by Scholl in order to ensure the proper positioning and placement of a surgical instrument and/or implant (column 1, lines 10-12).

Claims 79, 89 and 99 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ferrante et al. (US Pat. 6,565,573 B1) in view of Errico et al. (US Pat. 5,520,690).

Ferrante et al. disclose the claimed invention except for the system further comprises a set screw, wherein the set screw inhibits movement of the elongated member relative to the first bone screw when engaged with the elongated member.



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Errico et al. disclose a system comprising an elongated member (column 3, lines 1-15, i.e. plate), bone screws (column 3, lines 1-15) and set screws (column 3, lines 12-15), the set screws being used to lock the bone screws to the plate (column 3, lines 12-15).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have constructed the system of Ferrante et al. with set screws as taught by Errico et al., in order to utilize the set screws to lock the bone screws to the plate or rod (column 3, lines 12-15).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Please see attached PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerry Cumberledge whose telephone number is (571) 272-2289. The examiner can normally be reached on Monday - Friday, 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JLC



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